

HOUSE No. 1969

By Mr. Walsh of Boston, petition of Martin J. Walsh and others for legislation pertaining to fair and responsible contracting practices at the Massachusetts Bay Transportation Authority. Transportation.

The Commonwealth of Massachusetts

PETITION OF:

Martin J. Walsh
Michael F. Rush

Brian P. Wallace
Joseph R. Driscoll

In the Year Two Thousand and Five.

AN ACT PERTAINING TO FAIR AND RESPONSIBLE CONTRACTING PRACTICES AT THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. General Laws, c. 149, s. 44(A)(1), as last
2 amended by St. 1998, c. 194, s. 182 shall be amended as
3 follows:—

4 The definition of “Public Agency” shall be amended by placing
5 a period after the word “thereof” in the third line and deleting the
6 words “but not including the Massachusetts Bay Transportation
7 Authority”.

1 SECTION 2. General Laws, c. 161A, as last amended by St.
2 199, c. 127, s. 151, shall be amended as follows:—

3 Add new section 48. “A. Notwithstanding any other provisions
4 of Ch. 161A, all bidders and all subcontractors under the bidders
5 for work performed for the Authority shall be subject to Mass.
6 Gen. Laws Ch. 149, §44A and Mass. Gen. Laws Ch. 30, §39M
7 and all said bidders and all subcontractors referenced above shall,
8 as a condition for being awarded a bid, agree in writing that they

9 affirmatively comply with all of the following obligations, and
10 shall, in fact, comply with the following obligations:

11 1. The bidder and all subcontractors under the bidder must
12 comply with the obligations established under MGL Ch. 149, to
13 pay the appropriate lawful prevailing wage rates to their
14 employees.

15 2. The bidder and all subcontractors under the bidder must
16 maintain or participate in a bona fide apprentice training program
17 as defined by Chapter 23, s. 11H and 11I for each apprenticeable
18 trade or occupation represented in their workforce that is
19 approved by the Division of Apprentice Training of the Depart-
20 ment of Labor and Workforce Development and must abide by the
21 apprentice to journeymen ratio for each trade prescribed therein
22 the performance of the contract.

23 3. The bidder and all subcontractors under the bidder must fur-
24 nish, at their expense, hospitalization and medical benefits for all
25 their employees employed on the project and/or coverage at least
26 comparable in value to the hospitalization and medical benefits
27 provided by the health and welfare plans in the applicable recog-
28 nized by MGL Ch. 149, s. 26 in establishing minimum wage rates.

29 4. The bidder and all subcontractors under the bidder must
30 maintain appropriate industrial accident insurance coverage for all
31 the employees employed on the project in accordance with MGL
32 Ch. 152.

33 5. The bidder and all subcontractors under the bidder must
34 properly classify all individuals as employees rather than indepen-
35 dent contractors and treat them accordingly for purposes of
36 workers' compensation insurance coverage, unemployment taxes,
37 social security taxes and income tax withholding.

38 B. The bidder and all subcontractors under the bidder who are
39 awarded or who otherwise obtain contracts on projects subject to
40 MGL Ch. 149, s. 44A(2) shall comply with the obligations num-
41 bered 1 through 5 as set forth in paragraph A above for the entire
42 duration of their work on the project, and an officer of each such
43 bidder or subcontractor under the bidder shall certify under oath
44 and in writing on a weekly basis that they are in compliance with
45 such obligations.

46 C. Any bidder or subcontractor under the bidder who fails to
47 comply with any one of obligations 1 through 5 as set forth in

48 Paragraph A above for any period of time shall be subject to one
49 or more of the following sanctions: (1) cessation of work on the
50 project until compliance is obtained; (2) withholding of payment
51 due under any contract or subcontract until compliance is
52 obtained; (3) permanent removal from any further work on the
53 project; (4) liquidated damages payable to the Commonwealth of
54 Massachusetts, the City or Town or the Authority for whom the
55 bid or subcontract is being performed, in the amount of 5% of the
56 dollar value of the contract.

57 D. In addition to the sanctions outlined in Paragraph C above, a
58 general bidder or contractor shall be equally liable for the viola-
59 tions of its subcontractor with the exception of violation arising
60 from work pursuant to subcontracts that are subject to MGL
61 Ch. 149, s. 44F. Any contractor or subcontractor who has been
62 determined to have violated any of the obligations set forth in
63 Paragraphs A and B above shall be barred from performing any
64 work on any future projects for six months for a first violation, for
65 three years for a second violation, and permanently for a third vio-
66 lation.

67 E. All bidders shall comply with the provisions of Executive
68 Order 390 of 1996. In meeting the requirements of this paragraph
69 the Authority, Board or Agency shall consult with the executive
70 director of minority business enterprise in the executive office for
71 administration and finance.

72 (1) The Authority, Board or Agency shall prepare quarterly
73 reports which shall include, but not be limited to: (i) the total dol-
74 lars expended on the project to date, (ii) the number of contracts
75 entered into to date; (iii) the number of contracts entered into with
76 minority businesses; (iv) the number of contracts entered into with
77 women-owned businesses; (v) the dollar value of contracts
78 entered into with minority businesses; (vi) the dollar value of con-
79 tracts entered into with women-owned businesses; (vii) the total
80 number of employees working on the project; (viii) the total
81 number of employees working on the project, broken down by
82 race, ethnicity and gender; and (ix) the total number of Massachu-
83 setts residents working on the project. Said quarterly reports shall
84 be submitted to the secretary of the executive office for adminis-
85 tration and finance, the house ways and means committee, the
86 senate ways and means committee, the clerk of the house, the

87 clerk of the senate, and the house committee on long-term debt
88 and capital expenditures.

89 F. The provisions of this section shall not apply to construction
90 projects for which the low general bid was less than \$10,000 or to
91 work performed pursuant to subcontracts that are subject to MGL
92 Ch. 149, s. 44F and that were bid for less than \$5,000.

93 G. If any provision of this law, or the application of such provi-
94 sion to any person or circumstances, shall be enjoined or held to
95 be invalid, the remaining provisions of this law, or the application
96 of such provisions to persons or circumstances, other than that
97 which is enjoined or held invalid shall not be affected thereby.

98 H. Notwithstanding any provisions to the contrary in Massa-
99 chusetts General Laws, and in addition to all of the foregoing
100 requirements, any contractor seeking to perform construction or
101 maintenance services of any kind under a contract awarded by the
102 Authority shall be required to affirmatively prove that it qualifies
103 as a “responsible” contractor and possess the necessary technical
104 qualifications, financial resources, business integrity and past per-
105 formance record to successfully perform the contract work.

106 I. To ensure the effective administration of this responsible con-
107 tractor policy, the following rules shall apply:

108 1. Contractor Submissions: Each contractor shall submit, with
109 each contract bid or proposal, the documents listed below and des-
110 ignated “Required Documentation” and a completed copy of the
111 “Questionnaire” set forth below. No contract shall be awarded
112 until at least twenty-one (21) days following the deadline for bids
113 or proposals.

114 2. Subcontractor Submissions: Where a contractor intends to
115 subcontract any of the contract work, it shall provide the docu-
116 ments listed below and designated “Required Documentation” and
117 the “Questionnaire” set forth below for its subcontractors. Sub-
118 contractor information shall be submitted by the contractor at least
119 twenty-one days prior to the commencement of any work by the
120 subcontractor.

121 3. Non-Responsibility Finding: Information provided in the
122 submissions may constitute grounds for the issuance of a written
123 non-responsible contractor determination where it shows the con-
124 tractor/subcontractor lacks the requisite qualifications, past per-

125 formance record or business integrity to perform the contract
126 work.

127 4. False/Inaccurate Submissions: The submission of any false
128 or misleading information shall result in immediate disqualifica-
129 tion. Likewise, the failure to submit complete or accurate informa-
130 tion shall result in immediate disqualification.

131 5. Full Public Disclosure: With the exception of financial state-
132 ments, contractor/subcontractor submissions (documents and
133 questionnaires) shall be made available for immediate public
134 inspection by either the placement of same in a public documents
135 room, or by disclosures made within ten (10) days upon the sub-
136 mission of a written request.

137 6. Updating Submissions: Contractor/subcontractor submis-
138 sions shall be deemed valid for a period of three months from
139 their date of filing and need not be updated for new projects bid
140 by the contractor/subcontractor, provided there are no material or
141 relevant changes to the information provided therein.

142 J. REQUIRED DOCUMENTATION.

143 1. Financial Statements: Audited/certified annual financial
144 statements for the past five years, including balance sheets and
145 income/expense statements.

146 2. Bonding: Proof of adequate payment and performance
147 bonding and bonding capacity for the type(s) and amount(s) deter-
148 mined by applicable law.

149 3. Licensing: Proof of all contractor/subcontractor licenses as
150 required by applicable law; proof of a licenses and/or certifica-
151 tions for all craft personnel required by applicable law or industry
152 code.

153 4. Management Personnel: Resumes of all management per-
154 sonnel responsible for the contract work, including project man-
155 agers, superintendents and forepersons.

156 5. Staffing Capabilities: Proof of adequate staffing capabilities
157 to perform the contract work, including a list of names and classi-
158 fications of all craft employees currently employed and other
159 available sources of craft personnel.

160 6. Apprenticeship Training: Proof of participation in bona fide
161 registered apprenticeship programs for all craft employees
162 employed by the contractor/subcontractor used to perform the
163 contract work.

164 7. Health Insurance: Proof of participation in a bona fide health
165 insurance plan which covers all craft employees employed by the
166 contractor/subcontractor.

167 8. Pension Plan: Proof of participation in a bona fide pension
168 plan, which covers all craft employees employed by the con-
169 tractor/subcontractor.

170 9. Insurance Coverage: Proof of adequate comprehensive
171 bodily injury, property damage and workers compensation insur-
172 ance.

173 10. Experience Modification Rating: Experience Modification
174 Ratings provided by the contractor/subcontractor in the past
175 five (5) years with names, addresses and telephone numbers for
176 two owner representatives for each project.

177 11. Project Listing: A complete list of all current and past pro-
178 jects performed by the contractor/subcontractor in the past five (5)
179 years with names, addresses and telephone numbers for two owner
180 representatives for each project.

181 12. Performance Evaluations: All performance evaluation
182 reports prepared on work performed by the contractor/subcon-
183 tractor at any time during the five (5) year period immediately
184 preceding the date of the contract solicitation.

185 K. REQUIRED CONTRACTOR/SUBCONTRACTOR QUES-
186 TIONNAIRE.

187 A. Instructions.

188 1. Applicable Time Period: Answers to the following questions
189 should include any incidents or actions occurring within five (5)
190 years preceding the date of submission, unless otherwise speci-
191 fied.

192 2. Affirmative Answers: If the contractor/subcontractor pro-
193 vides an affirmative answer to any of the questions in this ques-
194 tionnaire, it should submit a detailed statement for any such
195 answer explaining the incident or action at issue.

196 3. Related Firms/Persons: For purposes of these questions, the
197 term “contractor/subcontractor” shall mean:

198 (a) the contractor or subcontractor submitting the bid/proposal;

199 (b) any firms related to the contractor/subcontractor through
200 common ownership, common management or common officers or
201 directors; and

202 (c) any firms in which any of the owners, officers or directors
203 of the submitting contractor/subcontractor previously participated
204 in as an owner, officer or director.

205 B. Questions.

206 1. Debarment/Suspension: Has the contractor/subcontractor
207 been debarred or suspended by any jurisdiction or contracting
208 authority (federal, state or local)? Yes ___ No ___

209 2. Non-Responsibility Findings: Has the contractor/subcon-
210 tractor been determined to be non-responsible or otherwise ineli-
211 gible to submit bids/proposals on any project? Yes ___ No ___

212 3. Contract Defaults: Has the contractor/subcontractor been
213 declared in default in any manner for any project? Yes ___ No ___

214 4. Contract Terminations: Has the contractor/subcontractor
215 been terminated or otherwise removed from any project? Yes ___
216 No ___

217 5. Liquidated Damages: Has the contractor/subcontractor been
218 subject to any liquidated damage claims in connection with any
219 project? Yes ___ No ___

220 6. Legal Claims: Has the contractor/subcontractor had any
221 liens, lawsuits, arbitration claims, or other legal claims filed
222 against it in connection with any project? Yes ___ No ___

223 7. Bankruptcy Actions: Has the contractor/subcontractor
224 declared bankruptcy or been in receivership? Yes ___ No ___

225 8. Law Violations: Has the contractor/subcontractor been found
226 in violation of any statute, regulation or other law by any local,
227 state or federal administrative agency or court of law? Yes ___
228 No ___

229 9. Charges/Investigations: Has the contractor/subcontractor
230 been accused of, investigated for or charged with alleged viola-
231 tions of any statute, regulation or other law? Yes ___ No ___

232 10. Revocation: Has the contractor/subcontractor had any
233 license, permit or certification revoked? Yes ___ No ___

234 11. Bonding Denials: Has the contractor/subcontractor been
235 denied bonding or increases in bonding capacity? Yes ___ No ___

236 12. Conflicts of Interest: Does any individual serving in a man-
237 agerial or advisory capacity of the contractor/subcontractor have
238 any relationship with any individual employed by the entity solic-
239 iting bids/proposals for the contract work? Yes ___ No ___

240 13. Sanctions: Has the contractor/subcontractor had any sanc-
241 tions imposed on it with respect to its permits or licenses? Yes ____
242 No ____

243 14. Bonding: Has the contractor/subcontractor had any
244 instances where it has been unable to obtain bonding? Yes ____
245 No ____

246 15. Government Judgment: Has the contractor/subcontractor
247 been subject to any government judgment or lien? Yes ____ No ____

248 16. Taxes: Has the contractor/subcontractor failed at any time
249 to pay any federal, state or city taxes? Yes ____ No ____

250 17. Charges: Does the contractor/subcontractor have any
251 pending administrative, misdemeanor or felony charges against it?
252 Yes ____ No ____

253 If the answer to any of the above questions is yes the con-
254 tractor/ subcontractor must provide any and all documentation
255 documenting the contractor/subcontractor's affirmative answer.

256 I declare under the penalty of perjury that the foregoing infor-
257 mation is true and correct to the best of my knowledge, informa-
258 tion and belief and that the failure to provide complete, truthful
259 and accurate information shall provide grounds for immediate dis-
260 qualification of any bid or proposal submitted.

261 By: _____

262 _____

263 Print Name & Position of Person Signing

264 _____

265 _____

266 _____

267 Print Full Name & Address of Company

268 Executed this ____ day of _____

269 Notary Information

270 _____

271 _____

272 L. Contractors and their subcontractors and their representa-
273 tives have a responsibility to deal ethically with the Authority and
274 therefore all information provided by vendors to the Authority
275 must be complete and accurate. Accordingly, failure of a con-
276 tractor or subcontractor to provide relevant information required
277 by this statute or specifically requested by agents of the Authority

278 may be grounds for a determination of nonresponsibility. Failure
279 to meet any of the foregoing criteria shall be grounds for disquali-
280 fication of a prospective contractor or subcontractor. The
281 Authority shall make all information submitted pursuant to the
282 provisions of this statute available to the public by making it
283 available in written form and on a computer database or website.
284 The Authority shall not enter into a contract with a contractor or
285 subcontractor that is a nonresponsible bidder under the provisions
286 of this statute.

287 M. Contracts shall be awarded by the Authority to responsible,
288 prospective contractors only. A responsible contractor is one
289 which is capable in all respects to perform fully the contract
290 requirements and has the business integrity to justify the award of
291 public tax dollars. The factors that shall be considered in deter-
292 mining a contractor's responsibility shall be:

- 293 (a) a satisfactory record of business integrity;
- 294 (b) compliance with all applicable legal requirements for uti-
295 lization of small, minority-owned and women-owned businesses
296 as subcontractors;
- 297 (c) a satisfactory record of performance;
- 298 (d) financial resources;
- 299 (e) technical qualifications;
- 300 (f) experience;
- 301 (g) organization, material, equipment, facilities and personnel
302 resources and expertise necessary to carry out the work and to
303 comply with required delivery or performance schedules;
- 304 (h) accounting and auditing procedures adequate to control
305 property, funds or other assets.